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BOARD OF PHYSICAL THERAPY

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF PHYSICAL THERAPY EXAMINERS

IN THE MATTER OF

MYLEN B. ESTANISLAO, P.T.
License No. 40QA01125900

Administrative Action

**MODIFIED
CONSENT ORDER**

TO PRACTICE PHYSICAL THERAPY
IN THE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Physical Therapy Examiners (hereinafter "the Board") upon receipt of information questioning the physical therapy services that were provided at Therapro, a comprehensive outpatient rehabilitative facility. The Board requested directly from Therapro documentation of their business locations and employees. At the Board's request six random patient records were obtained from Therapro's ^{NORTH BERGEN} ~~Jersey City~~ location. After reviewing the records, the Board invited Mylen B. Estanislao, P.T. (hereinafter "Respondent") to appear at an investigative inquiry.

On March 11, 2008 Respondent appeared with counsel, Thomas J. Tamburelli, Esq., at an investigative inquiry held by the Board. Respondent provided physical therapy services to Patient E.L. approximately seven times from February 27, 2007 through May 5, 2007 for neck and lower back pain. Respondent testified that she performed the Initial Evaluation of E.L. but failed to document the location of E.L.'s radiating pain after the initial evaluation. Respondent also testified that the patient's record listed E.L.'s medications but not their purpose or E.L.'s medical history. Respondent further testified that there was no medical history in the physical therapists' charts but the physical therapists have access to the physician's charts. Respondent could not clearly explain the details or source of the pain scale or range of motion scale that she used to evaluate the patient. Respondent also developed a plan for strengthening and stretching exercises for the lower extremities and hamstrings, but did not document any testing or measurements of the lower extremities or hamstrings. Respondent also documented a generalized long term and short term plan of care, but did not document any expected time frames. Respondent testified that she conducted myofascial release and applied hot packs but did not indicate in the patient record where they were applied on the patient. Respondent also testified that she gave E.L. a worksheet with home exercises but did not place a copy in the patient's file. Respondent did not document how the patient had progressed based on the goals established at the initial evaluation. Towards the end of treatment, Respondent billed using a one-on-one billing code for a therapeutic exercises when Respondent testified that she did not supervise the patient on the exercise bicycle. E.L.'s discharge form inconsistently indicated that E.L. was a good candidate to continue rehabilitation services,

yet the patient was discharged. Respondent acknowledged that she signed the discharge papers but did not notice the discrepancy.

Respondent also testified that she treated B.S. approximately five times from December 30, 2006 through January 18, 2007 for dizziness and difficulty walking. Respondent prepared the initial evaluation of B.S. Respondent's patient record indicated that B.S. was taking antihypertensive medication, but not the specific medications taken. Respondent testified that she assessed the patient's Berg score for balance, but the score was not included in the patient's chart. Respondent testified that B.S. was given a worksheet for home exercises, which was also not included in the patient's chart. Respondent did not record the patient's progress with exercises, for example how long it takes to induce symptoms in a habituation exercise. Respondent never completed a discharge statement for B.S. although the patient never returned to therapy after January 17, 2007. The office sent B.S. a letter dated August 8, 2007, discharging the patient.

Respondent provided physical therapy services to D.S. approximately nine times from February 6, 2007 through May 8, 2007 for knee pain. Respondent testified that she recorded the treatments and exercises that were performed, such as heat, IFC and hamstring curls, but did not record details including the weight, number of repetitions, or other parameters, whether the treatment was done bilaterally, what the patient's response was, or how effective the treatments were in decreasing symptoms. Respondent also stated that she provided certain services which were not recorded or billed for. Respondent testified that she billed for a one-on-one code with D.S. when she was seeing other patients at the same time. Patient D.S. was discharged due to loss of insurance although

Respondent's assessment indicated the patient was still experiencing pain and the discharge form indicated that the patient should continue with therapy.

A review of the patient record also indicates that the documentation maintained on patients E.L., B.S., and D. were not in compliance with the Board's patient record regulation as set forth in N.J.A.C. 13:39A-3.1. Specifically, Respondent failed to maintain contemporaneous records that accurately reflected the patient contact with Respondent in violation of N.J.A.C. 13:39A-3.1(a). Respondent took an incomplete medical history, failed to indicate which body parts were treated, failed to explain the parameters used, failed to indicate the modalities used, and did not enumerate the home exercise in the chart. Additionally, several violations of the records regulation were found, which included failure to record the dates of all evaluations or interventions (N.J.A.C. 13:39A-3.1(c)2), failure to record the conclusions of the evaluation (N.J.A.C. 13:39A-3.1(c)4), failure to record a diagnosis and prognosis (N.J.A.C. 13:39A-3.1(c)5), failure to accurately record services rendered including the components of intervention and the patient's response (N.J.A.C. 13:39A-3.1(c)8), failure to record progress notes in accordance with goals and changes in the patient's condition (N.J.A.C. 13:39A-3.1(c)9), failure to record changes in the plan of care (N.J.A.C. 13:39A-3.1(c)11), failure to document communication with other health professionals relative to the patient's care (N.J.A.C. 13:39A-3.1(c)12), and a failure to record a discharge summary at the time of patient discharge (N.J.A.C. 13:39A-3.1(c)13).

The Board further finds that the billing charges were excessive in violation of N.J.A.C. 13:39A-3.6. Specifically, Respondent billed for one-on-one activity when the services provided were not one-on-one, and respondent inaccurately billed the exercise bicycle and wobble board as therapeutic exercises instead of therapeutic activity.

Having reviewed the entire record, including the testimony of respondent at the investigative inquiry, it appears to the Board that pursuant to N.J.A.C. 13.39A-3.8(a), the Respondent's actions constitute a violation of N.J.S.A. 45:9-37.11 et. seq. and professional misconduct pursuant to N.J.S.A. 45:1-21(e). Specifically, Respondent's violations included a failure to notify the referring physician that further treatment was unnecessary and that treatment was being terminated in violation of N.J.A.C. 13.39A-3.8(a)6, and a failure to assure that the patient's bills accurately reflected the services rendered and were based solely upon the services reflected in the patient record in violation of N.J.A.C. 13.39A-3.8(a)10.

These facts establish basis for disciplinary action pursuant to N.J.S.A. 45:1-21(e) and (h). It appearing that respondent desires to resolve this matter without admissions and without recourse to formal proceedings and for good cause shown;

IT IS ON THIS *22nd* DAY OF *March*, 2010

HEREBY ORDERED AND AGREED THAT:

1. Respondent is hereby given a warning for the violations of the patient records regulations at N.J.A.C. 13:39A-3.1 and excessive billing regulation at N.J.A.C. 13:39A-3.6.

2. Within one year of the filing date of this order, Respondent shall successfully complete a documentation course, an ethics course, and a differential diagnosis course. Each course shall be a minimum of three credits to be administered and provided by an approved and accredited physical therapy school. Respondent must obtain Board approval

in writing prior to attendance and these courses shall not be utilized for credit toward continuing education requirements for license renewal. Should the respondent take and successfully complete a course that is more than three credit hours, she can carry over the additional credits to satisfy the current continuing education courses. However the respondent is reminded that she can only take up to a maximum of 10 of the 30 continuing education credits as on line credits.

3. Respondent is hereby assessed civil penalties in the amount of \$5,000.00, including a penalty in the amount of \$2,500.00 for failing to maintain proper patient records in violation of N.J.A.C. 13:39A-3.1 and a penalty in the amount of \$2,500 for excessive billing charges in violation of N.J.A.C. 13:39A-3.6. The total amount of the penalty is payable in installment payments over an 18 month period. Payment for the civil penalties totaling \$5000.00 shall be submitted by certified check or money order made payable to the State of New Jersey in 18 monthly installments and shall be sent to the attention of Lisa Affinito, the Executive Director of the Board of Physical Therapy Examiners, at P.O. 45014, Newark, New Jersey, 07102. The first installment payment of \$277.77 shall be due and owing on April 15, 2011 and the 18th installment in the amount of \$277.91 shall be due and owing on September 15, 2012.

4. Respondent is hereby assessed the costs of the investigation to the State in this matter in an amount of \$675.50. Payment for the costs shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the Board no later than thirty (30) days from the entry of this Consent Order. Payment shall be sent to the attention of Lisa Affinito at the address described in paragraph #3.

5. Failure to remit any payment required by this Order will result in the filing of a certificate of debt, and may result in further disciplinary proceedings.

NEW JERSEY STATE BOARD OF
PHYSICAL THERAPY EXAMINERS

By: Karen Wilk P.T. DPT 40QA00560100
Karen Wilk, P.T. DPT
Chairperson

I have read and understand the within Consent Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.

MYLEN A. ESTANISLAO, P.T.
B. mbe

Consent as to the form and entry of the Order is hereby given by:

Gordon J. Golum
Gordon J. Golum, Esquire